

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Sudeen G. Kelly.

Chandeleur Pipe Line Company

Docket No. CP04-48-001

ORDER GRANTING AND DENYING
REQUEST FOR CLARIFICATION

(Issued August 9, 2004)

1. On June 9, 2004, Chandeleur Pipe Line Company filed a timely request for rehearing or, in the alternative, a request for clarification of the order issued in *Chandeleur Pipe Line Company*, 107 FERC ¶ 61,162 (May 11, 2004).
2. The May 11 Order authorized Chandeleur to acquire and operate the Mobile Area Gathering System (MAGS), a pipeline previously used for gathering offshore Louisiana and Mississippi. Chandeleur objects to the requirement in the May 11 Order that it must demonstrate that there will be no subsidization of the MAGS facilities by its existing customers when it seeks to roll the costs of the facilities into its system-wide rates. Chandeleur claims that it is appropriate for the Commission to consider factors other than subsidization when rolling in rates and that rolled-in rates are appropriate in cases involving the inexpensive expansion of existing facilities. In addition, Chandeleur asserts that the Commission should have conditioned the certificate on its compliance with section 157.20(d), rather than section 157.20(c) of the regulations.
3. We find that the May 11 Order properly applied our policy on subsidization when an applicant seeks to roll in rates. We also find that the certificate should be conditioned on Chandeleur's compliance with section 157.20(d).

I. Background

4. The May 11 Order authorized Chandeleur, among other things, to acquire Chevron Natural Gas Pipe Line LLC's (Chevron) interest in MAGS, an offshore gathering pipeline, and to operate all of MAGS as part of Chandeleur's interstate transmission

system.¹ The order authorized Chandeaur to charge its current Part 284 rates for service on MAGS and noted that since none of the MAGS costs were included in Chandeaur's currently effective rates, there would be no subsidization by existing customers. The May 11 Order stated that if Chandeaur proposes rolled-in rate treatment for the MAGS facilities in the future, Chandeaur will be required to demonstrate that there will be no subsidization of the cost of service of the MAGS facilities by Chandeaur's existing customers.

5. In its application, Chandeaur did not propose to construct facilities. Ordering Paragraph (B) of the May 11 Order required Chandeaur to comply with paragraph (c) of section 157.20 of the regulations.

II. Requests for Clarification

6. Chandeaur objects to the requirement in the May 11 Order that it must demonstrate that there will be no subsidization of the cost of service of MAGS by existing customers if it proposes rolled-in rate treatment in the future. Chandeaur requests clarification that if it seeks rolled-in rate treatment, it will be permitted to demonstrate any and all benefits that would outweigh any adverse impact on the pipeline's existing customers.² Chandeaur states that it recognizes that the threshold requirement for rolled-in rate treatment is that the expansion not be subsidized by existing customers. Nevertheless, Chandeaur contends that rolled-in rate treatment is appropriate in cases of inexpensive expansibility that is made possible because of earlier, more costly construction.³ Chandeaur states that it is not seeking a determination that rolled-in rate treatment is appropriate here, but is merely seeking an opportunity to make a case for such treatment in the future without the limitations imposed in the May 11 Order.

¹ Chevron did not own all of the MAGS facilities but shared ownership with two non-jurisdictional gathering companies, one of which was not selling its interest to Chevron. Under the circumstances presented in the May 11 Order, we found that the non-jurisdictional company not selling its ownership interest would not be harmed by Chandeaur's proposals. *Chandeaur*, 107 FERC at P 21-23.

² Chandeaur's request at 3.

³ To support its position, Chandeaur cites Tennessee Gas Pipe Line Company, 89 FERC ¶ 61,129 (1999).

7. Since it did not propose to construct facilities, Chandeaur contends that Ordering Paragraph (B) should not have required it to comply with section 157.20(c). Rather, Chandeaur contends that Ordering Paragraph (B) should have referenced section 157.20(d).

III. Discussion

8. In its pleading, Chandeaur appears to advance two theories under which it can obtain rolled-in rate treatment in the future for the MAGS facilities. Initially, Chandeaur appears to contemplate balancing the benefits of its proposed acquisition of MAGS against potential adverse impacts and treating any subsidization of new customers by existing customers as merely one adverse impact to balance against the benefits. Such a proposal would not conform to our existing policy, as announced in the Certificate Policy Statement.⁴ The Policy Statement provides guidance as to how we will evaluate proposals for certificating new pipeline construction or acquiring existing facilities. The Policy Statement explained that in deciding whether to authorize the construction or acquisition of facilities, we balance the public benefits against the potential adverse consequences. However, under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Only after finding that the proposal involves no subsidization, do we move to the next step and determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route if there is new construction. Thus, our decision to authorize Chandeaur's acquisition of the MAGS facilities is premised on the finding there will be no subsidization of those facilities by existing customers. To obtain rolled-in rate treatment for the MAGS facilities in the future, Chandeaur will need to demonstrate that there will continue to be no subsidization of new customers by existing customers. Balancing benefits against adverse impacts would only be relevant in this context if Chandeaur could establish benefits to existing customers sufficient to eliminate any subsidy.⁵

⁴ Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *Order clarifying statement of policy*, 90 FERC ¶ 61,128, *Order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000). In Equitrans, L.P., 91 FERC ¶ 61,041 (2000), we applied the Policy Statement to the acquisition of facilities.

⁵ It is not subsidization for existing customers to pay for facilities from which they will benefit.

9. In addition, Chandeaur appears to suggest that language in the Policy Statement referencing “inexpensive expansibility” establishes an exception to the no subsidy requirement. Again, Chandeaur’s interpretation is not correct. “Inexpensive expansibility” is rather an exception to the Policy Statement’s preference for incremental rates.⁶ Incremental pricing will avoid subsidies for the new project. However, in some cases, an expansion can be constructed at a relatively inexpensive cost because of the existence of earlier, more costly facilities. Since the existing customers bear the cost of the earlier, more costly construction or acquisition in their rates, incremental pricing of the expansion could result in the new customers receiving a subsidy from existing customers because the new customers would not face the full cost of the construction that makes the new service possible.⁷ In such an instance, we will require rolled-in rate treatment because it will reduce the costs of the existing customers.

10. The *Tennessee* case does not support Chandeaur’s position that rolled-in rate treatment is appropriate merely because the case involves inexpensive expansibility. Tennessee proposed to construct and operate compression and other facilities to provide transportation service. The order found that the revenues from the proposed project would exceed the cost of service by more than \$43 million over ten years and that annual revenues would exceed annual costs in each of the ten years.⁸ On the basis of these facts, we concluded that there would be no subsidization by existing customers since revenues exceeded costs. Thus, we found that rolled-in rate treatment was appropriate because it would reduce the costs of Tennessee’s existing customers. We did not approve rolled-in rate treatment merely because the facilities were inexpensive to construct. We approved the roll in because it prevented subsidization of the expansion by existing customers.

11. In conclusion, the May 11 Order properly found that Chandeaur must demonstrate that there will be no subsidization of the cost of service of MAGS by existing customers, if it proposes rolled-in rate treatment in the future.

12. Section 157.20(c) sets forth the filing procedures that an applicant must comply with when constructing facilities. Section 157.20(d) sets forth the filing procedures an applicant must comply with when acquiring facilities. Specifically, under section 157.20(d), the applicant must make a filing within 10 days of the acquisition and the commencement of authorized operations. The May 11 Order authorized Chandeaur to

⁶ 88 FERC at p. 61,746.

⁷ *Id.*

⁸ 89 FERC at p. 61,362.

acquire the MAGS system. The order did not authorize any construction. Thus, we will clarify that Ordering Paragraph (B) should have required Chandeaur to comply with section 157.20(d).⁹

The Commission Orders:

(A) The May 11 Order properly required that Chandeaur must demonstrate that there will be no subsidization of the MAGS facilities by its existing customers when it seeks rolled-in rate treatment.

(B) Ordering Paragraph (B) in the May 11 Order is modified to require Chandeaur to comply with section 157.20(d) of the regulations.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁹ On July 8, 2004, Chandeaur notified the Commission that it acquired the MAGS facilities on July 1, 2004 and that the MAGS facilities commenced operating as part of Chandeaur's transmission system on that date.